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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,618	03/25/2002	John David Schnabel	DYOUN0216US	5796
26710	7590	08/27/2004	EXAMINER	
QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497			KING, ANITA M	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 08/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/869,618

Applicant(s)

SCHNABEL ET AL.

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 4-8 and 18-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,9 and 13-17 is/are rejected.
- 7) ☒ Claim(s) 10-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

This is the third office action for application number 09/869,618, Cabinet, filed on March 25, 2002.

Election/Restrictions

Claims 4-8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 7, 2003.

Newly submitted claims 18-24 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the newly submitted claims are drawn to an electrical cabinet, the originally elected invention was drawn to a frame which could be use for a storage rack or table.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 18-24 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the pin and clip, cited in claims 14 and 15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 1 and 9 are objected to because of the following informality: in line 1 of both claims, a comma should be inserted after "cabinet" in an effort to distinguish the claimed invention from the intended use. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 1-3, 13, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. The preamble in claim 1 clearly indicates that a subcombination is being claimed, e.g., "a frame for mounting panels of a cabinet...". This language would lead the examiner to believe that the applicant intends to claim only the subcombination of "a frame," the cabinet, panels, and frame members being only functionally recited. This presents no problem as long as the body of the claim also refers to the cabinet, panels, or frame members functionally.

The problem arises when the frame members are positively recited within the body of the claim, such as, "such integral members being inserted in an aperture of the frame members, followed by movement horizontally to secure the panel mount," in lines 8-11 of claim 1. There is an inconsistency within the claim; the preamble indicates subcombination, while in at least one instance in the body of the claim there is a positive recital of structure indicating that the combination of a frame and a cabinet are being claimed. The examiner cannot be sure if applicant's intent is to claim merely the frame or the frame in combination with the cabinet.

Applicant should make the language of the claim consistent with applicant's intent. In formulating a rejection on the merits, the examiner is considering that the

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claims are drawn to the combination and the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention, the language in the preamble should be made consistent with the language in the body of the claims. If the intent is to claim the subcombination, then the body of the claims must be amended to remove positive recitation of the combination.

Claim 2 recites the limitation "the side members or braces" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 3 recites the limitation "the braces" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited terms. It is unclear if "a first and a second side member," in line 3 of the claim is intended to refer to the original recitation of the term "a plurality of vertically-extending side members," in line 2 of claim 9.

Claim 13 recites the limitation of "the horizontally-extending hook" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "the braces" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 1, 9, 13, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,788,490 to Featherman. In regard to claim 1, Featherman discloses a frame (10) comprising mounts (30) having attachment members (46) for receiving panels, the panel mounts being mountable to frame members (12) by hook-shaped integral members (40) formed in a cutout aperture (38) which extend from a vertical edge of the cutout aperture substantially parallel to an outer face of the panel mount at a spacing from the outer face and in a horizontal direction, the integral members each being insertable in an aperture (24a) in the frame members, followed by movement horizontally to secure the panel mount to the frame members and to align a bore spaced horizontally from the integral member with a bore spaced horizontally from the aperture in the panel mount, and a retaining device (not shown) than being inserted in aligned bores in the panel members and the frame members to retain the panel mount in position.

In regards to claims 9, 13, and 16, Featherman discloses a frame (10) comprising a plurality of vertically-extending side members (12), each of the side members including at least one aperture (24a) and a corresponding bore spaced horizontally from the aperture; at least a vertically extending panel mount (30), the panel mount including a horizontally extending hook-shaped integral member (40) and a bore spaced horizontally from the hook shaped member, the hook-shaped member being sized and dimensioned to be received in the aperture in the vertically-extend side member such that the hook extends horizontally along a wall of the side member; at least one horizontally-extending end member (28), the end member extending between

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at least a first and a second vertically extending side members to form the frame; at least one fastening device, sized and dimensioned to be received in the bores in the vertically extending side members and the bore in the panel mount, wherein the horizontally extending hook shaped member in the panel mount is receive in a selected one of the apertures in the side members and is engaged to a wall of the side member wherein the bore adjacent the hook-shaped member is aligned with the bore adjacent the selected apparatus and the fastening device is received in each of the aligned bores to attach the panel mount to the side member; wherein the hook-shaped member comprises a three-sided cutout in which the cutout is bent outwardly and back parallel to a surface of the panel mount to form the horizontally-extending hook; and wherein the side members include a plurality of horizontally-spaced apertures and a plurality of horizontally spaced bores, the number of bores being equivalent to the number of apertures, wherein each of the plurality of bores is spaced horizontally from and adjacent to the corresponding one of the horizontally-spaced apertures, such that the panel mount is receivable in any of the horizontally-spaced bores in the side member.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Featherman. Featherman discloses the claimed invention except for the limitations of the apertures being spaced at 25mm and the fastening device being a pin or a clip. It

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would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the distance between the apertures in Featherman to have been 25 mm for the purpose of providing a specified distance to mount the panels for the purpose of providing a uniformed distance between each panel. It would have been obvious on to one having ordinary skill in the art at the time the invention was made to have modified Featherman to have included a pin or a clip for a fastening device, since it is known in the art of mounting panels to frames to use a clip or a pin for fastening and securing.

Allowable Subject Matter

Claims 3 and 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 10-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1-3 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anita M. King
Primary Examiner
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August 23, 2004